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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[19 March 1996]

1. In the context of the agenda item under which the Commission will deal with the item entitled "Further promotion and encouragement of human rights and fundamental freedoms", Human Rights Watch wishes to highlight two extremely serious forms of human rights violations, investigated by us in the course of the past year, namely the issue of domestic violence worldwide and the problem of mass exoduses in the former Yugoslavia. We also want to address the problem of impunity for grave abuses of human rights and the potential for dealing with impunity and preventing further abuses that lies in the establishment of the tribunals for the former Yugoslavia and for Rwanda.

Domestic violence against women

2. Domestic or family violence is one of the leading causes of female injuries in almost every country in the world. The forms of violence that women experience in the home, including rape, murder, assault and battery, are condemned by the criminal laws of virtually all countries. However, Governments often fail to prosecute attacks committed against women in intimate relationships, even when laws exist that specifically condemn domestic violence.

3. In the Russian Federation, police often refuse to investigate the assault and rape of women in their homes and deny women the chance to file reports of domestic abuse, under the rationale that such violence is a "family affair". In Brazil, over 70 per cent of all reported cases of violence against women take place in the home, yet a statistically insignificant number ever result in punishment. In South Africa, despite the new Government's pledge to address the staggering levels of violence against women and a 1993 Prevention of Family Violence Act, police and judicial officials continue to misinform, discourage or turn away women complainants.

4. Under international law, Governments are obligated to refrain not only from committing human rights violations directly, but also to prevent and respond to human rights abuses committed by private actors without discrimination. States must ensure, among other things, the right to life, the right to be free from torture or cruel, inhuman or degrading treatment, and the security of the person. Governments are obliged to exercise due diligence to prevent such violations by private actors, as stressed by the Commission on Human Rights' Special Rapporteur on violence against women. A State must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses. However, in many countries around the world, domestic abuse is not recognized as a crime, or existing laws are framed and applied in a manner that virtually precludes redress. States not only fail to exercise due diligence, but routinely deny women victims of domestic violence equal protection. At every step of the process to obtain legal protection, battered women face discrimination that prevents them from receiving protection or from seeking the prosecution of batterers.

5. Human Rights Watch calls on the Commission on Human Rights to urge Governments to denounce domestic violence as a crime, exercise due diligence and fully uphold the right of women to equal protection of the law. States should criminalize all forms of violence against women; investigate, prosecute and punish domestic abusers without bias; educate the public to change discriminatory attitudes concerning women, particularly among law enforcement officials; and impede repatriation of abuse by providing battered women with shelters, counselling, rehabilitation and enhanced support services. Governments must also ensure coordination among implementing law enforcement, judicial and social service agencies within the Government.

6. The United Nations should support efforts to eradicate domestic violence in all its human rights activities and, in particular, provide sufficient resources to the Special Rapporteur on violence against women. The Commission should also provide advisory services to Governments in order to improve the administration of justice with respect to violence against women and to eliminate the gender bias in national police and judicial systems.

Mass exoduses

7. During late 1995 and early 1996, over 370,000 people were forced from their homes in the former Yugoslavia, bringing the region one step closer to being segregated into demographically homogenous States.

8. In May 1995, over 5,000 Serbs fled Croatia to northern Bosnia following the capture of Western Slavonia. In July 1995, the eastern enclaves of Srebrenica and Zepa fell to Bosnian Serb forces, resulting in the brutal massacre of thousands of men and boys and the displacement of tens of thousands of families to Central Bosnia. The following month in the Krajina region, UNCRO stood by helplessly while triumphant Croatian troops committed widespread human rights abuses against the civilian population, forcing virtually the entire non-Croat population to flee. The course of the war shifted in the next months as Bosnian Serbs lost much territory that they had previously controlled, setting off the flight or expulsion of many Bosnian Serbs living in these areas. Bosnian Serb forces retaliated by expelling approximately 28,000 non-Serbs into Croatia and Central Bosnia, in many cases separating draft-age males from their families. Many civilians were killed, detained, or sent into forced labour during this period.

9. In September 1995, while political leaders met to negotiate a peace settlement, leaders on the ground were "ethnically cleansing" the few minorities remaining in areas under their control. This was particularly true in areas such as north-western Bosnia.

10. Following the November 1995 signing of the Dayton Accords, minority populations continued to leave their homes, either because they were too afraid to stay or because they were forced to do so. In late January 1996, 500 Bosnian Croat civilians in the town of Majdan were reportedly removed by Hrvatsko Vijece Obrane (Croatian Defence Council) troops to the town of Glamoc in a politically motivated resettlement effort, despite their wish to remain in their homes. In February and March, the tragic exodus of Serbs from Sarajevo was deliberately sparked by Bosnian Serb leaders who claimed it would not be possible for Serbs to live under "Muslim rule".

11. This effectively undermined the spirit of the Dayton Accords and solidified the position of leader Radovan Karadzic, an indicted war criminal. Sadly, the International Police Task Force failed its first real test in Bosnia because it had not yet deployed sufficient numbers to reassure the population, and the attempt by the High Representative to convince the Serbs to stay was belated and appeared half-hearted. The Bosnian Government, for its part, did little to demonstrate its commitment to restore and protect the multi-ethnic character of Sarajevo.

12. Not only have minority populations fled their homes throughout Bosnia, but refugees and displaced persons have also been prevented from returning to their homes in a number of towns. Freedom of movement is still hindered in many parts of Bosnia, especially in Mostar, Jajce, and recently, in the Posavina corridor and in Doboj. It is clear that, if the minorities are not given reassurances that the international community will protect them and if persons indicted for war crimes remain in power, the chances for long-term peace are slim.

13. Urgent action is required. Human Rights Watch calls on the Commission on Human Rights to investigate thoroughly - either through its Special Rapporteur on the former Yugoslavia or by creating a separate mechanism for that purpose - the specific steps taken by local authorities to ensure the safety of those who want to return or remain, as well as their efforts to encourage those who wish to return to their homes. We call on the Commission to stipulate for this investigation to result in a report to be transmitted through the Secretary-General to the Security Council, and to be submitted no later than 1 June 1996. The report should indicate whether there has been significant non-compliance by the parties with their obligations under the Dayton Peace Accords with respect to the right to return or remain.

Impunity and the international tribunals

14. Impunity for the most egregious violations of human rights continues to be the norm, despite the international community's pronouncements condemning "ethnic cleansing" killings in the former Yugoslavia, genocide in Rwanda and massive violations of the laws and customs of war in Chechnya, to name only the most visible examples. Though international law has long since developed principles designed to ensure accountability for crimes against humanity, such as universal jurisdiction, so far there has been a manifest lack of political will to enforce them. Where domestic courts are unavailable, unwilling or incapable of dealing effectively and fairly with these crimes, the international community must provide the means for redress to the victims while strictly respecting standards of fair trial. The Security Council has created ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, and all nations are duty-bound to cooperate with them and with the Office of the Prosecutor.

15. Human Rights Watch welcomed with great hope the creation of the tribunals and has fully appreciated their potential for the prevention of the most egregious crimes in the future. The tribunals could mean a new era in the enforcement of international humanitarian and human rights law. But, in order for them to play this historic role, they must function effectively. The failure to ensure that the tribunals work at their full capacity will, in addition to abandoning those who have been waiting for justice in the former Yugoslavia and Rwanda, sends a disastrous message to war criminals, current and potential, worldwide. It will also undermine the authority of the United Nations by signalling that tough words are not supported by deeds.

16. While insisting on each country's obligation to investigate, prosecute and punish these crimes, Human Rights Watch urges the international community to make accountability a reality through effective enforcement of international law. Human Rights Watch calls on the Commission on Human Rights to urge member States to cooperate fully with the international tribunals, including in arresting and extraditing indicted war criminals. We call on the Commission to emphasize cooperation with the tribunals in the resolutions it will be considering regarding both Rwanda and the former Yugoslavia. We also call on the Commission to urge member States to assure full financial backing for the two ad hoc tribunals.